

Members

Tim Kennedy  
Lynn Clothier  
Eric Walts  
Dr. James Sackett  
Alex Slabosky  
Jean Macdonald  
Theresa Jolivet  
Chris Bojrab  
June Lyle  
Nancy Jewell  
Don Koors  
Kyle Allen  
Reggie Henderson  
Lisa Winternheimer  
Sheri Caveda  
Dr. Anita Siccadi  
Pat Hansen



# HEALTH POLICY ADVISORY COMMITTEE

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Authority: IC 2-5-23

## MEETING MINUTES<sup>1</sup>

**Meeting Date:** September 14, 2006  
**Meeting Time:** 3:00 P.M.  
**Meeting Place:** State House, 200 W. Washington St., Room 233  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 2

**Members Present:** Tim Kennedy; Lynn Clothier; Dr. James Sackett; Alex Slabosky; Jean Macdonald; June Lyle; Don Koors; Kyle Allen; Reggie Henderson; Lisa Winternheimer; Sheri Caveda; Dr. Anita Siccadi.

**Members Absent:** Eric Walts; Theresa Jolivet; Chris Bojrab; Nancy Jewell; Pat Hansen.

The meeting was called to order at 3:03 p.m. by the convener, Mr. Alex Slabosky. Mr. Slabosky delayed election of a chairperson until later in the meeting because there was not a quorum.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

### **Contact Lens Trade Issue**

Ms. Tory Callaghan Castor introduced Mr. Jay Magure, Director of Legislative Affairs for 1-800-CONTACTS, and distributed information to the Committee about 1-800 CONTACTS and the trade issue. See Exhibit 1. Mr. Magure informed the Committee that the language in House Resolution 73-2006 is language from a settlement agreement entered into between three manufacturers of contact lenses and attorney generals from 32 states to protect consumers after seven years of litigation on the matter. The settlement agreement required these manufacturers to sell contact lenses in a commercially reasonable and non-discriminatory manner to alternative channels of distribution. The settlement agreement expires November 1, 2006. Eye care providers, which include opticians, optometrists, and ophthalmologists, are one of the few health care provider groups that are allowed to sell the product that they prescribe. Eye care providers profit from the sale of these products, not the eye examinations. Contact lenses in the United States are one of the most regulated industries. A prescription is required and the prescription is brand specific, not allowing for a generic substitute like prescription drugs. In Japan, contact lenses do not require a prescription and eye care providers are not allowed to sell contact lenses. Further, contact lens manufacturers are entering into exclusive relationships with eye care providers in the United States, which is an anti-competitive practice and not consumer friendly. Mr. Magure mentioned a Federal Trade Commission (FTC) study that stated that exclusive agreements between manufacturers and eye care providers are not prevalent. Mr. Magure stated that these agreements are currently not prevalent because of the settlement agreement that is still in effect but will expire this year.

Dr. Michael Cohen, Vice President of Professional Services for 1-800 CONTACTS and an optometrist, stated that he is licensed in 12 states. Dr. Cohen is concerned that there is an emerging trend in the profession to place profits before patient care. Dr. Cohen also explained that contacts are all packaged in the same manner and that the actual contact does not differ based on where the lens was purchased. Dr. Cohen distributed some packaged contact lenses to Committee members to see how they are packaged. Eye care providers do not check every lens that is given to a patient because 730 lenses for a one-year supply for one patient would be too much.

Mr. Edward Correia, Counsel for CooperVision, Inc., stated that he opposed the legislation introduced last year (HB 1308-2006), commenting that there was already vigorous competition in the contact lens industry. See Exhibit 2 for a written copy of Mr. Correia's testimony. Mr. Correia stated that CooperVision does not have any exclusive agreements with eye care providers and that it was not a party to the settlement discussed by Mr. Magure. CooperVision's product, Proclear, which is often given as an example by 1-800 CONTACTS, is sold at Sears, Walmart, Target, and other retail outlets. The FTC conducted a study of contact lens distribution regarding whether restrictions on distribution limited a consumer's choice and hurt the consumer. The FTC rejected this argument, saying that the restrictions on distribution did not harm competition and consumers. (See <http://www.ftc.gov/opa/2005/02/contactlens.htm> for the study report). Further, the FTC looked specifically at Proclear, CooperVision's product, finding that this product is sold to retailers ranging from independent eye care professionals to optical chains, wholesale clubs, and mass merchandisers, and that the restrictions placed on the distribution of this brand did not harm competition or consumers. Mr. Correia informed the Committee that Proclear has special FDA approval and that CooperVision is concerned about quality control measures on this product. Anti-trust laws allow manufacturers to choose who they want to enter into business with, and the legislation like that proposed in Indiana last year would be highly intrusive and affect competitive negotiating that presently takes place.

Mr. Jim Zieba, Indiana Optometric Association, stated that he opposed the legislation. This is a battle between the manufacturers and the distributors, and eye care professionals are getting caught in the middle of the fight. The language in HB 1308-2006 provided that an eye doctor could be charged with a Class A misdemeanor in certain circumstances. This language could prevent a consumer from having access to certain contact lenses in Indiana. The Federal Fairness to Contact Lens Consumers Act (FCLCA) protects the consumer by requiring that the patient receive a copy of the contact lens prescription prescribed and prevents the patient from being required to purchase the contact lenses from the prescriber. (See Exhibit 3 for a summary of the FCLCA and other materials provided by Mr. Zieba). Mr. Zieba stated that he has received many complaints from his members that 1-800 CONTACTS is providing more contact lenses than the prescribed amount. Mr. Zieba stated that this is a federal issue and that Congress has a meeting scheduled on September 15, 2006 to hear this issue. The legislation proposed in Indiana would interfere with an individual's right to contract.

Ms. Kim Williams, Indiana Academy of Ophthalmology, informed the Committee that ophthalmologists are concerned with patient safety. If this legislation were to move forward, prescriptive authority would be affected because of the certification process in the legislation. Utah passed legislation on this issue last year which resulted in a manufacturer deciding to no longer do business in Utah. The FTC has a fact sheet on its website informing consumers of their rights, including the right to purchase lenses from places other than the eye care professional. Federal law is in place to protect consumers of contact lenses already. See Exhibit 4 for material provided to the Committee by Ms. Williams.

Ms. Peggy Venable, consumer advocate representing Americans for Prosperity, expressed her interest in preserving consumer choice and a free market. Ms. Venable asked the Committee not to wait for the federal government to fix the problem. Consumers are concerned with higher health care costs and need to be able to shop around in the marketplace. Ms. Venable stated that eye care professionals are using bogus health concerns to use exclusive brands and that eye care professionals are looking at profits before patients. No other health care professional is allowed to sell what the professional prescribes and this should be the case with eye care professionals. Ms. Venable supports the legislation as a way to increase consumer choice and a consumer's ability to shop around for the best deal. See Exhibit 5 for a written copy of Ms. Venable's testimony.

The Committee discussed the information presented and asked questions to those that testified. When asked whether there were contact lenses that were not available over the Internet, those testified responded that there are contact lenses not available over the Internet. When asked what will happen to the market once the settlement expires, Mr. Zieba stated that he did not think anything would change. When asked whether vision insurance factored into the issue, the Committee was told that vision insurance is structured differently than traditional health care insurance in that the insured is given a set amount of money for a product instead of being reimbursed at a set reasonable cost. When asked whether legislation that required the eye care professional to inform a patient when the contact lens being prescribed is part of an exclusive agreement, Mr. Zieba stated that he would have to ask his members but that he did not see a problem with such a requirement. The Committee was told that optical services are excluded from the federal Stark Act.

The Committee agreed that more time was need to review the subject and asked for the following information: copies of manufacturer contracts with retailers to determine whether there were clauses that restricted who the retail could sell the product to, the number of

eye care professionals in Indiana that are part of an exclusive care agreement, and why optical services were excluded from the federal Stark Act.

### **Election of Chairperson**

A Committee member nominated Mr. Alex Slabosky to be Chairperson of the Committee, and the nomination was seconded. The Committee unanimously voted for Mr. Slabosky to be Chairperson.

### **Study Committee Consolidation**

Staff informed the Committee that the packet of information given to the members included the statutes of the five committees that the Legislative Council charged the Committee to review for consolidation purposes, as well as comments from a member of one of the committees. See Exhibit 6 for copies of the statutes and other information distributed to the Committee. The five committees are: (1) Medicaid Advisory Committee; (2) Medicaid Work Incentives Council; (3) Health Care Account Advisory Board; (4) Health Finance Advisory Committee; and (5) Health Policy Advisory Committee (this Committee). Mr. Slabosky also distributed a spreadsheet comparing the make-up of the committees. See Exhibit 7. Staff informed the Committee that some of the committees have not met in a while and some do not currently have appointed members. According to Jim Jones, chairperson of the Medicaid Advisory Committee, this committee is federally required and is doing its own internal review to consider the effectiveness of the committee. Ms. Jessaca Turner Stults, FSSA, stated that FSSA would prefer that there be one committee to represent each of the five divisions of FSSA. The Committee discussed the fact that other committees dealing with human services were not part of the Legislative Council's directive to review. The Committee discussed whether some of the committees could be combined, and that this may affect the mission of committees that continue to operate. The Committee requested that they have more time to consider this issue.

After discussion, Mr. Slabosky determined that the next meeting of the Committee will be on September 28, 2006 at 1:00 p.m. The meeting adjourned at 5:10 p.m.